IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

W.P.(C).No. 15353 of 2007(C)

PETITIONERS:

1. RAMA V.K., VELIYATH HOUSE,
   P.O.EDATHIRINJI, VIA-IRINJALAKUDA,
   THRISSUR DISTRICT.

2. ASHAMOL K.A., KANIYAMKUNNATH HOUSE,
   EDAPPALLY P.O., KOCHI-24.

3. SOSHY P.M., PANOOR HOUSE, VYPEEN,
   AZHEEKAL P.O., ERNAKULAM DISTRICT.

4. INDU G. NAIR, RADHALAYAM,
   MATHIRAPPILLY, KOTHAMANGALAM P.O.,
   ERNAKULAM DISTRICT.

BY ADV. SRI.O.D.SIVADAS

RESPONDENTS:

1. COCHIN UNIVERSITY OF SCIENCE &
   TECHNOLOGY, COCHIN UNIVERSITY P.O.,
   COCHIN-22, REPRESENTED BY ITS REGISTRAR.

2. THE REGISTRAR, COCHIN UNIVERSITY OF
   SCIENCE & TECHNOLOGY, COCHIN UNIVERSITY P.O.,
   COCHIN-22.

3. THE VICE CHANCELLOR,
   COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY,
   COCHIN UNIVERSITY P.O., COCHIN-22.

BY SRI.A.A.ABDUL HASSAN, SC, COCHIN UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.15353 OF 2007

Dated this the 25th day of May, 2007

JUDGMENT

Cochin University of Science and Technology (for short 'CUSAT') published Ext.P2 rank list of selected candidates for appointment to the post of Assistant Grade-II on May 26, 2005. Petitioners have been placed in the said list at Sl.Nos.99, 102, 107 and 98 respectively. The validity of the list is due to expire on May 25, 2007. The primary prayers in the writ petition read thus:

> i) issue a writ of mandamus or appropriate direction to the respondents to fill up the entire vacancies of Assistant Grade available in the University by appointing candidates from Ext.P2 rank list before expiry of the rank list.
>
> ii) issue appropriate writ, order or direction to the respondents to take necessary steps to terminate the entire temporary hands working in the cadre of Assistant Grade and also take steps to fill up those vacancies from Ext.P2 rank list.

2. The primary grievance of the petitioners as spelt out from the averments in the writ petition, is that the University

is refusing to fill up the available vacancies of Assistant Grade-II for no apparent or justifiable reason. The University has appointed several temporary hands in the available vacancies on daily wage basis and also on tenure basis. Petitioners contend that the methodology adopted by the University in filling up the vacancies by engaging temporary hands is illegal and arbitrary. It deprives the petitioners of an opportunity to get employment. Petitioners have been waiting in the queue for the last two years while temporary hands are allowed to work in the post which the petitioners are legitimately entitled to occupy.

3. It is the case of the petitioners that the sanctioned strength of Assistant Grade-II in the University is 210. They contend that there are 18 leave without allowance vacancies (LWA) in addition to 5 deputation vacancies.

4. In response to the above contentions, the University has pointed out that the Leave Without Allowance vacancies have now been filled up. The deputation vacancies are now being manned by temporary hands. They cannot be filled up

with regular hands since the deputationists may return any time. It is further contended by the University that temporary hands were being engaged by the University to meet contingencies. More importantly, Government has not given permission to the University to fill up the sanctioned posts because of financial stringency. The Government has advised the University to appoint temporary hands to meet contingencies if the University so chooses. The financial position of the University is such that it cannot fill up the entire posts with regular hands on its own. The counter affidavit filed by the University in writ petition no.6330/07 raising the above contentions has been adopted in this case also. Writ petition 6330/07 has been disposed of today through a separate judgment.

5. It is pertinent to note that petitioners have filed this writ petition suppressing the fact that they have been engaged by the University on temporary basis. It is pointed out by the learned Standing Counsel that the petitioners have been working as temporary hands for the last more than one

year in short spells of 179 days. Petitioner No.1 is on his 3rd extension. Similarly, petitioner No.2 and 3 have been given two extensions while petitioner no.4 had two extensions to her credit. She declined to accept the offer of 3rd extension to her. I have referred to this aspect only to point out that the petitioners have not come before this court with clean hands. The thrust of the contentions in the writ petition has been on the disenchantment of the petitioners that they have not been given appointment though they found a place in the select list. It is true that petitioners wanted regular appointment. But still they could have revealed the fact that they have been working in the University for the last more than one year, though on a temporary basis. Curiously, one of the prayers in the writ petition is to terminate the entire temporary hands working in the cadre of Assistant Grade-II.

6. When this writ petition had come up for consideration on the previous occasion, learned Standing Counsel was directed to find out whether the University had made any back door appointment. This court wanted to ensure that all

temporary appointments, if needed, were made through employment exchange or from the existing rank list. Even at that stage, petitioners had not revealed the fact that they are working in the University as temporary hands. The fact remains that the University has been fair enough in engaging the petitioners on temporary basis. It is now brought to my notice that petitioner No.1 had already been offered regular appointment out of the rank list in view of his better rank position. Petitioners 2 to 4 will have to necessarily wait for their turn.

7. Learned counsel for the petitioners prays for a direction to the University to allow the petitioners to continue as temporary hands and to regularise them in service as and when Government takes a decision to sanction regular posts. I am not persuaded to accede to the above request for reasons more than one. It is for the employer to see that the financial position allows him to engage employees on a regular basis. The pay master has to necessarily find out the ways and means to pay his employees. It may be easy for the

candidates in the rank list to insist for appointment. Mere, inclusion in the list does not entitle the candidates to insist that they should be appointed, irrespective of the paying capacity of the pay master. Similarly, the request made by the learned counsel that the 5 deputation vacancies may be directed to be filled up forthwith, cannot also be accepted. As rightly pointed out by the learned Standing Counsel, the deputed persons may return to the parent organisation any time. It will be the responsibility of the employer to take them back, the moment they come back.

8. In the peculiar facts and circumstances of the case, petitioners 2 and 3 cannot be granted any reliefs.

Writ petition fails and it is accordingly dismissed.

A.K.BASHEER, JUDGE

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